Sup Ct Off Docs

483

SUPREME COURT OF THE UNITED STATES.

No. ~~259~~ 744 85 5 8 6 49.

WILLIAM W. BELL, PLAINTIFF IN ERROR,

vs.

THE MOBILE AND OHIO RAILROAD COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

CCLIX. GIDEON, Printer, 511 Ninth Street, D.C.

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Exemplification.

MOBILE AND OHIO RAILROAD COMPANY
vs.
W. W. BELL.

Pleas had at a District Court of the United States for the Northern District of Mississippi, begun and held at the town of Pontotoc, in and for said district on the first Monday of June, 1860.

Present, the Honorable Samuel J. Gholson, Judge of said Court.

Be it remembered, that on the 30th day of November, 1858, the Mobile and Ohio Railroad Company sued out of the office of the Clerk of the District Court of the United States for the Northern District of Mississippi, its certain summons, in the words and figures following, to wit:

Summons.

United States of America,
Northern District of Mississippi.

The President of the United States to the Marshal of the Northern District of Mississippi, greeting:

We command you without delay to summon William W. Bell, a citizen of the said Northern District of Mississippi, that he be and appear before the District Court of the United States, to be held at the town of Pontotoc, in and for the Northern District of Mississippi, on the first Monday of December next, to answer to The Mobile and Ohio Railroad Company, a corporation created and established by an Act of the Legislature of the State of Alabama, and having its existence and place of business in the State of Alabama, and being a citizen of the State of Alabama, of a plea of trespass on the case upon promises to plaintiffs' damage twenty thousand dollars, and that he do file his plea or defence with the clerk of said Court on or before the meeting of the same, or judgment will be given against him by default, and have then and there this writ.

Witness, the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, at Pontotoc, the first Monday of June, A. D. 1858, and eighty-second year of the Independence of the United States. Issued the 30th day of November, 1858.

R. W. EDMONDSON, *Clerk.*

Upon which said summons is an endorsement by the clerk in the words and figures following, to wit:

Action of assumpsit, brought to recover the sums of $8,873 62, due upon a draft drawn by J. T. Williams, President, &c., dated the 22d June, 1857, upon said defendant, and for the like amount due for money had and received, and for the like amount due on an account stated. The sum of $8,873 62 is the sum demanded in this suit. Declaration filed when writ issued.

R. W. EDMONDSON, *Clerk.*

The marshal made his return in the words and figures following, to wit:

Received 30th Nov., 1858. Executed Dec. 1st, 1858.

W. H. H. TISON, *Marshal.*
By E. W. ROOTES, *D. M.*

And at the issuance of said summons, plaintiff, by attorneys, filed its declaration in the words and figures following, to wit:

Declaration.

United States of America, } District Court,
Northern District of Mississippi. } December Term, 1858.

The Mobile and Ohio Railroad Company, a corporation created and established by an Act of the Legislature of the State of Alabama, having its corporate existence and place of business in said State of Alabama, and being a citizen of said State of Alabama, by attorney, complains of William W. Bell, a citizen of the State of Mississippi, resident in said Northern District, in custody, &c., of a plea of trespass on the case upon promises. 1st. For that whereas, on the 22d day of June, A. D. 1857, at the district aforesaid, said defendant had received and collected, as sheriff and tax collector of Pontotoc county, Mississippi, by order of the Board of Police of said county, the sum of eight thousand eight hundred and seventy-three dollars and sixty-two cents, for the purpose of paying for stock in said Mobile and Ohio Railroad Company, and then and there had and held the same subject to the order of the President of the Board of Police of said county of Pontotoc; and, whereas, on said 22d day of June, A. D. 1857, at Pontotoc, Mississippi, to wit: at the district aforesaid, Joseph T. Williams, who was then and there President of the Board of Police of said county of Pontotoc, by the way and style of "J. T. Williams, President Board of Police," drew his certain order in writing of that date, directed to said defendant by the way and style of "W. W. Bell, Sheriff and Tax Collector of Pontotoc County," and thereby then and there ordered and required said defendant to pay to said plaintiff, or to the attorney and agent of said plaintiff, the sum of money theretofore collected by him, the said defendant, under the order of the Board of Police of Pontotoc county, for the purpose of paying for stock in said Company, and delivered the said order so drawn to the attorney and agent of said plaintiff, of all which said defendant then and there had notice: and plaintiff avers that

afterwards, on the day and year aforesaid, at the district aforesaid, the said order was, by the attorney and agent of said plaintiff, produced and shown to said defendant, who then and there promised to pay the same, whereby said defendant then and there became liable to pay said plaintiff said sum of eight thousand eight hundred and seventy-three dollars and sixty-two cents, so collected as aforesaid, and being so liable, then and there undertook and promised said plaintiff to pay the same when he should be thereafter requested.

2d. And whereas, also, on the day and year aforesaid, at the district aforesaid, said defendant had collected and received the sum of eight thousand eight hundred and seventy-three dollars and sixty-two cents under an order of the Board of Police of Pontotoc county, Mississippi, for the purpose of paying for stock in said Mobile and Ohio Railroad Company, and had and held the same subject to the order of the President of the Board of Police of said county; and afterwards, to wit: on the day and year aforesaid, at Pontotoc, Mississippi, to wit: at the district aforesaid, Joseph T. Williams, President of the Board of Police of said county, by the way and style of "J. T. Williams, President Board Police," drew his certain order in writing upon and directed to said defendant, and thereby then and there required said defendant to pay said sum of money so collected by him to said plaintiff, or to the agent and attorney of said plaintiff, and then and there delivered said order to the agent and attorney of said plaintiff, of all which said defendant then and there had notice: and plaintiff avers that afterwards, to wit: on the day and year aforesaid, said order, so drawn and delivered, was presented and shown to said defendant, who then and there accepted and promised to pay the same on demand; and plaintiff avers that afterwards, on the 23d day of June, A. D. 1857, at the district aforesaid, and again on the 25th day of June, A. D. 1857, at the district aforesaid, said order was presented and shown to said defendant, and payment thereof demanded by the attorney and agent of said plaintiff, which was then and there refused by said defendant.

3. And whereas, also said defendant heretofore, on the 25th day of June, A. D. 1857, at the district aforesaid, was indebted to said plaintiff in the further sum of ten thousand dollars, for so much money by the said defendant, before that time had and received to and for the use of the said defendant, and in the further sum of ten thousand dollars found to be due from said defendant to said plaintiff, on an account then and there stated between them, and being so indebted, said defendant then and there, undertook and faithfully promised said plaintiff to pay said several sums of money, when he should be thereunto requested. Nevertheless, said defendant although often requested so to do, has not paid said several sums of money, or any or either of them. But so to do

has hereto wholly neglected and refused, and still neglects and refuses so to do, to the damage of the plaintiff twenty thousand dollars, and therefore plaintiff sues, &c.

MILLER & ROBINS,
Attorneys for Plaintiff.

And at the return term, named in said summons, defendant filed his plea, in the words and figures following, to wit:

Plea.

United States of America. District Court of the United States. Northern District of Mississippi. } December Term, A. D. 1858.

The Mobile and Ohio Railroad Company
vs.
William W. Bell.

1st. And the said William W. Bell, comes and says that this Court ought not to have or take further cognizance of the action aforesaid, because he says that the said plaintiff is not a corporation created and established by an Act of the Legislature, of the State of Alabama, having its corporate existence and place of business in said State of Alabama, and being a citizen of said State of Alabama, and was not such at the time of the commencement of this action. And this the said defendant is ready to verify; wherefore he prays judgment, whether this Court can or will take further cognizance of the action aforesaid.

2d. And for other and further plea in this behalf, the said defendant comes and says, that this Court ought not to have or take further cognizance of the action aforesaid, because he says that the said plaintiff is not a citizen of the State of Alabama, and a corporation created and established by an Act of the Legislature, of said State of Alabama, having its corporate existence and place of business in said State of Alabama, but said defendant says that said plaintiff is an aggregate corporation, created and established by several acts, to wit: An Act of the Legislature of the State of Alabama, An Act of the Legislature of the State of Tennessee, and An Act of the Legislature of the State of Mississippi, entitled, "An Act to incorporate the Mobile and Ohio Railroad Company;" approved on the 17th day of February, A. D. 1840, and that said company has organized and is, and was at the time of the commencement of said action, doing business under and by virtue of said several Acts, of the said several States, and each and all of them unitedly; that the corporators who are and were chosen and elected to manage its said corporation affairs, and conduct its business are citizens, some residing in said State of Alabama, some in said State of Tennessee, and some in said

State of Mississippi, and were such resident citizens, at the time of the commencement of said suit, that the locality and habitancy, and residence of said aggregate corporation, is jointly in said several specified States, and its individuality is not in said State of Alabama, that said corporation does not perform its functions or exercise its rights and priviliges by virtue of said Alabama charter, or Act of said Alabama Legislature, single or alone, but by virtue of all of said named charters and Acts of the Legislature, and is the creature of them all, and of no one of them, and that its business is one of entire in all three of said States; that said company, at the time of commencement of said action, was capable of being sued in the State of Mississippi, and is so now, and is and was so sued, that one Milton Brown, is and was at the time of the commencement of said suit President of said Company, and President of the Board of Directors, and is now, and was then, a resident citizen of the State of Tennessee, and a stockholder in said company; that one Eli Abbott, one J. M. Cunningham and one John J. McRae, are now and were, at the time of the commencement of said suit, stockholders and corporators in said company, and resident citizens of the State of Mississippi; that the State of Mississippi, is and was, at the time of the commencement of said suit, a large, and one of the principal stockholders in said company, that thousands of resident citizens of said State of Mississippi, are now and were, at the time of the commencement of said suit, stockholders and corporators in said company, that a large proportion of the daily business of said corporation, is conducted and carried on in said State of Mississippi, and was so at the time of commencement of said suit; and that a large amount of its property and effects is situate and lying in said State of Mississippi, and was so at the time of the commencement of said suit; and so defendant says, that said plaintiff is not a citizen of said State of Alabama, as alleged, and was not at the time of the commencement of said suit. And this the said defendant is ready to verify, wherefore he prays judgment, whether this Court can or will take further cognizance of the action aforesaid.

JAMES T. HARRISON and OTHERS,
Attorneys for Defendants.

United States of America. District Court of the United States. Northern District of Mississippi. } December Term, A. D. 1858.

The Mobile and Ohio Railroad Company
vs.
William W. Bell.

Affidavit to Pleas.

Before me, Robert W. Edmondson, clerk of the above Court, this day personally appeared the said William W. Bell, who after

having been by me first duly sworn, says that the above pleas by him pleaded, are true in substance and in fact, to the best of his knowledge, information and belief, and as he is advised.

W. W. BELL.

Sworn and subscribed, this 8th of December, A. D. 1858.

R. W. EDMONDSON, *Clerk.*

Plaintiff, by attorneys, filed its Replication to first plea in abatement in the words and figures following, to wit:

United States of America. } District Court.
Northern District of Mississippi. } Dec. Term, 1858.

The Mobile and Ohio Railroad Company
vs.
W. W. Bell.

Plaintiff's Replication.

And said plaintiff, by attorney, comes and says that the Court ought not to be ousted of its cognizance and jurisdiction of this action by reason of anything by the said defendant in his said first plea above alleged, because said plaintiff says that said plaintiff is a corporation created and established by an Act of the Legislature of the State of Alabama, having its corporate existence and place of business in said State of Alabama, and being a citizen of said State of Alabama, at the time of the commencement of this action. And this the said plaintiff prays may be enquired of by the country, &c.

MILLER & ROBINS,
Attorneys for Plaintiff.

Plaintiff, by attorneys, filed its replication to second plea in abatement, December 8th, 1858, in the words and figures following, to wit:

The Mobile and Ohio Railroad Company
vs.
W. W. Bell.

Plaintiff's Replication to Second Plea.

And said plaintiff, by attorney, comes and as to said second plea of said defendant, says that the Court ought not to be ousted of its cognizance and jurisdiction of this action by reason of anything by the said defendant in his said second plea above alleged, because said plaintiff says that said plaintiff is a corporation established by an Act of the Legislature of the State of Alabama, having its corporate existence and place of business in said State of Alabama, and that said matters and things stated in said second

plea are not true, as stated therein, and of this said plaintiff puts itself upon the country, &c.

MILLER & ROBINS,
J. W. C. WATSON,
Attorneys for Plaintiffs.

And afterwards, to wit, on the 15th day of June, 1859, the following proceedings were had, to wit:

Mobile and Ohio Railroad Company
vs.
W. W. Bell.

Order of Court, June, 1859.

Wednesday, June 15th, A. D. 1859. Tenth Day.

This day came the parties, by their attorneys, and then came on to be heard plaintiffs' demurrer to defendant's plea in abatement, and thereupon the said demurrer was sustained, and then came on to be heard defendant's demurrer to plaintiffs' declaration, and the same was taken under consideration by the Court, and this cause continued.

Defendant's demurrer to plaintiffs' declaration, is in the words and figures following to wit:

United States of America, Northern District of Mississippi. } District Court of the United States. Dec. Term, A. D. 1858.

The Mobile and Ohio Railroad Company
vs.
William W. Bell.

Defendant's Demurrer.

And the said defendant, by his attorney, comes and defends the wrong and injury, when, &c., and says said plaintiff ought not to maintain said action against him; and said defendant says that said first and second counts of said declaration are insufficient in law, and that he is not bound by law to answer the same, and this he is ready to verify, wherefore he *demurs in law*, and prays judgment whether he ought to make any other or further answer to said first and second counts, and for cause of demurrer he says:

1st. That said counts of said declaration do not state facts sufficient to constitute a cause of action.

2d. That said counts do not show any power or authority for the collection of said taxes, or show when, where, how, or by virtue of what law or precept said taxes were collected, or how the Mobile and Ohio Railroad Company became entitled to the same: or by what authority the Board of Police *ordered* the col-

lection of the same *for the purpose of paying for stock* in said Company: or how said sheriff held said sum of money as such sheriff or tax-collector, subject to the order of said President of the Board of Police, or what authority said President had to give said order in writing to said defendant as such sheriff and tax-collector, or what authority he had to pay over or accept, or promise, as such sheriff and tax-collector, or to appropriate funds in that way.

3d. That it is not shown how said sheriff and tax collector became liable for a breach of official duty to said plaintiff, or why said suit is not against the officer, but the individual.

4th. There is no privity shown between the parties.

5th. Because it is not shown how the said President, in his official capacity, can draw such drafts for the payment of money on said defendant in his official capacity of sheriff and tax-collector.

6th. That the said counts do not set out any Act of the Legislature, or refer to the same, or show how said *stock* in the Mobile and Ohio Railroad Company could be taken in such a summary way by the said President of said road, or what stock it was, and to whom it was to belong, or how it had been taken.

7th. Because said counts are wholly insufficient, vague, uncertain, and defective in setting out said supposed cause of action, and are in other respects defective and insufficient.

JAMES T. HARRISON, and others,
Attorneys for Defendant.

Joinder in demurrer in short, by consent.

MILLER & ROBINS,
Attorneys for Plaintiff.

And afterwards, to wit, on the 5th day of December, 1859, the following proceedings were had, to wit:

Mobile and Ohio Railroad Company
vs.
William W. Bell.

Order of Court, December, 1859.

Monday, First Day, December 5th, A. D. 1859.

This day came the parties, by their attorneys, and then again came on to be heard the defendant's demurrer to the plaintiff's declaration, taken under advisement at the last term hereof. The Court being now fully advised thereon. It is ordered by the said demurrer be overruled, with leave to plead to the merits, and cause continued.

And afterwards, to wit, on the 5th day of December, 1859, defendant filed his plea in the words and figures following, to wit:

No. 2086.

United States of America. District Court of the United States for the Northern District of Mississippi.

Mobile and Ohio Railroad Company
vs.
W. W. Bell.

Plea.

And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and says he did not undertake or promise in manner and form as the plaintiff has above thereof complained against him, and of this he puts himself upon the country, &c.

HOUSTON & REYNOLDS, et alios,
Attorneys for Defendant.

And said plaintiff as to said plea above pleaded, in which the defendant puts himself upon the country, doth the like, &c.

MILLER & ROBINS,
Att'ys for Plaintiffs.

And afterwards, to wit, on the 4th day of June, 1860, the following proceedings were had, to wit:

Mobile and Ohio Railroad Company
vs.
William W. Bell.

Order of Court, June, 1860.

Monday, first day, June 4th, A. D. 1860.

This day came the parties by attorneys, and thereupon came a jury of good and lawful men, to wit, James Sykes and eleven others, tried, sworn and empanneled well and truly to try the issue joined between the parties, and thereupon this cause was continued over until to-morrow morning.

Mobile and Ohio Railroad Company
vs.
William W. Bell.

Tuesday, second day, June 5th, A. D. 1860.

This day again came the parties by their attorneys, and came also the jury of good and lawful men, to wit, James Sykes and eleven others, who had been tried, sworn and empanneled on a former day of the present term of this Court well and truly to try the issue joined between the parties, who, upon their oaths for their verdict, say they find the issue in favor of the plaintiff and

assess its damages at the sum of ten thousand four hundred and fifty-one dollars and forty-seven cents.

It is therefore considered by the Court that the plaintiff recover of the defendant the sum by the jury aforesaid assessed, and all costs in this behalf expended.

Defendant, by attorney, filed his Bill of Exceptions in the words and figures following, to wit:

Bill of Exceptions.

United States of America, Northern District of Mississippi. } District Court at Pontotoc, June Term, 1860.

Mobile and Ohio Railroad Company *vs.* William W. Bell.

Be it remembered that this day came on to be heard, and was heard the above stated cause, the same being a certain day of the said term of the said Court, and after reading to the jury the pleadings in the cause, the plaintiff, by attorneys, introduced as a witness Benjamin O. Earle, who testified that about the 22d day of June, 1857, he made out an estimate from the books and papers in the Offices of the Probate Clerk and Sheriff of Pontotoc county, Mississippi, which showed that defendant, as the Tax Collector for said county, had collected the sum of nine thousand two hundred and nine dollars and ninety-two cents for railroad purposes, and that out of that amount the said Bell was allowed three hundred and thirty-six dollars and thirty cents as his compensation for collecting said amount of taxes, as follows, to wit:

Earle's Calculation.

Amount of assessment on personal property for 1852,		$2839 70
" " " real estate "		1897 72
Additional assessment for 1852, ...		44 67
		$4782 09
Add railroad tax, ...		4782 09
		$9564 18
Deduct insolvency, ...		354 26
		$9209 92
Deduct 5 per ct. on $3000 is, ...	$150 00	
" 3 " $6209.92 is, ...	186 30	
		336 30
		$8873 62

Plaintiff next read to the jury, as evidence, an order given by

J. T. Williams, President of the Board of Police of Pontotoc county, Mississippi, to the plaintiff, or plaintiff's agent or attorney, as follows, to wit:

J. T. Williams' Order.

Pontotoc, Mississippi, June 22d, 1857.

To W. W. Bell, Sheriff and Tax Collector of Pontotoc county:

You will please pay to the Mobile and Ohio Railroad Company, or the attorney and agent of said Company, the sum of money heretofore collected by you under the order of the Board of Police of Pontotoc county, for the purpose of paying for stock in said Company, and this shall be your warrant for the same.

J. T. WILLIAMS,
President Board of Police.

It was admitted by defendant that J. T. Williams was, at the time, President of the Board of Police of Pontotoc county, and gave the order.

Plaintiff next introduced as a witness one A. M. Dowling, who proved that he had come to Pontotoc with Gov. Whitfield, who was the special agent of the Mobile and Ohio Railroad Company to settle the matter of difference existing between the said road and the county of Pontotoc in reference to the subscription by said county for one hundred thousand dollars stock in the said road, testified that Whitfield called upon Bell to know if he would accept an order from the President of the Board of Police of said county for the amount of money he had collected as taxes for railroad purposes; that Bell told him to get up his order, and fix it up right, and if things were fixed up right, he, Bell, had the money. He was afterwards present when the order was presented by Whitfield, and that Bell told Whitfield that he would take the matter under advisement, and would consult with his friends, and would let him know by eight o'clock next morning. That when the order was presented next morning, he refused to accept the order or pay the money.

Plaintiff next introduced as a witness, J. Robins, who testified that he was the attorney of the Road; the he heard Bell say to Whitfield, when insisted on to accept the order, that he would not do it, saying there was no necessity for accepting the order; that if he got the order, and all fixed up right, he, Bell, had the money. In the evening of the same day Bell complained that Whitfield had pressed him too much, and told witness that if he would get the order from Whitfield, he would settle the matter with him, witness, if he, witness, would take about twelve hundred dollars in paper money, and witness told him he would take

twelve hundred dollars paper money. That witness went and got the order, and went to Bell with it. Bell asked time to consider further of the matter, and afterwards declined the acceptance of the order or the payment of the money. That Whitfield was one of the Board of Directors, and was acting under written authority as agent, as follows, to wit:

Whitfield's Authority.

Office of the Mobile and Ohio Railroad Company,
Mobile, June 3d, 1857.

At the meeting of the Board of Directors held this day, the following resolution was adopted, to wit:

Resolved, That the Hon. James Whitfield be, and he is, hereby authorized and empowered to compromise and settle with the proper authorities of the County of Pontotoc, State of Mississippi, the claims of this Company against said county for the subscription of the same to the capital stock of this Company upon such terms as said Whitfield may deem expedient, and such settlement shall be binding on this Company.

The foregoing is a true copy from the minutes.

HENRY MYERS, *Sec'y.*

Plaintiffs next introduced and read as evidence, the Acts of the Legislature of the State of Mississippi, of 1848, (charter) 1850 and 1852, authorizing the different counties through which the Mobile and Ohio Railroad runs, to tax themselves for stock in the same.

An Act to incorporate the Mobile and Ohio Railroad Company.

Incorporation of Mobile and Ohio Railroad.—Whereas, the State of Alabama, by an Act approved 3d February, A. D. 1848, enacted as follows:

SEC. 1. Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That Jonathan Emanuel, George N. Stewart, Moses Woring, Sidney Smith, John Bloodgood, Miguel D. Eslava, Samuel G. Fisher, Charles L. Banon, John A. Campbell, Archibald W. Gordon, Charles Gascoigne, Philip Phillips, John C. Whitsell, and M. J. D. Baldwyn, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate by the name of the Mobile and Ohio Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any Court of this State; to make and have a common seal, and the same to break, alter, or amend at pleasure; and the company is hereby vested with all powers, privileges, and immunities, which are or may be necessary to carry into effect the purposes and objects of this Act hereinafter set forth; and said company is hereby authorized and em-

powered to locate, construct, and finally complete, a single, double, or treble railroad or way, from some suitable point in the city of Mobile, in a western or northwesterly direction, to the west line of this State, towards the mouth of the Ohio river, in such route as shall be deemed most expedient; and to transport, take and carry property and persons upon said railroad or way, by the power and force of steam, of animals, or of any other mechanical or other power, or any combination of them, which said company may choose to apply, and for the purpose of constructing said railroad or way, the said company is hereby authorized to lay out their road, not exceeding one hundred feet wide, through the whole length; and for the purpose of depots, cuttings, and embankments, and for the purpose of necessary turn-outs, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint-stock with any other railroad corporation. *Provided*, That all damages that may be occasioned to any person or corporation, by the taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company, in manner hereinafter provided.

Capital Stock.—SEC. 2. And be it further enacted, That the capital stock of said company shall not exceed ten millions of dollars, to be divided into shares of one hundred dollars each, which shares shall be deemed personal property, and be transferred in such manner, and at such place, as the by-laws of said company shall direct. *Provided*, That said company may commence the construction of said road, with all the powers and privileges contained in this Act, whenever the sum subscribed to the capital stock shall exceed two hundred and fifty thousand dollars.

Books to be Opened.—SEC. 3. And be it further enacted, That the persons named in the first section, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such time and places as they, or a majority of them may appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than five thousand shares of stock shall be subscribed, they shall have the power to make the shares so subscribed, the capital stock of said company. *Provided*, They shall not exceed one hundred thousand shares; and in case the subscriptions shall exceed one hundred thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

Government of Company.—SEC. 4. And be it further enacted,

That the immediate government and direction of the affairs of said company shall be vested in a board of thirteen directors, who shall be chosen by the stockholders of said company, in the manner hereinafter provided, and shall hold their office until others are duly elected and qualified, to take their places as directors; and the said directors, seven of whom (the President being one) shall be a quorum for the transaction of business, shall elect one of their number to be president of the board, who shall also be president of said company. They shall also choose a secretary, and such other officers as they may deem necessary, and a treasurer, who shall give bond with security to said company, in such sum as the said directors may require, for the faithful discharge of his trust.

Meeting of Stockholders.—SEC. 5. And be it further enacted, That the persons authorized by the third section of this Act, to open the books for subscription to the capital stock, are hereby authorized, after the book of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred and fifty thousand dollars, to call the first meeting of the stockholders of said company, in such way, and at such time and place, as they may appoint, for the choice of directors of said company, and in all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person, or by lawful proxy; and the annual meeting of the stockholders of said company for the choice of directors, shall be holden at such time and place, and upon such notice as the said company in their by-laws may prescribe.

Election of Directors—SEC. 6. And be it further enacted, That in case it shall so happen, that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause be deemed to be dissolved; but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancies which may occur by death, resignation, or otherwise.

Powers of Directors.—SEC. 7. And be it further enacted, That the Directors shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper, touching the disposition and management of the stock, property, estate, and effects of said company not contrary to this charter, or the laws of this State or of the United States, the transfer of shares, the duties and conduct of their officers and servants, touching the election of and meeting of the Directors, and all matters whatsoever, which may appertain to the concerns of said company; said company is also hereby authorized to pur-

chase, receive, and hold such estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may, by their agents, surveyors, engineers, and servants, enter upon all lands and tenements through which they may deem it necessary to make such road, and to survey, lay out, and construct the same, and to agree and contract for the land, or right of way with the owners through which they may intend to make the said road. In case said lands belong to the estate of any deceased person, then with the executor or administrator of such; or in case of the same belonging to a minor, or a person non compos mentis, then, with his or her guardian or guardians, or in case said lands be held by trustees of school sections or other trustees of estates, then with such trustees, and said executors, administrators, guardian, and trustees are hereby declared competent for such estate or minor, to contract with said company for the right to use, occupy and possess the lands of such estates, minors or trustee, so far as may be useful or necessary to the purposes of said railroad; and the act and deed of such executors, administrators, guardians or trustee, in relation thereto, shall pass the title in said land in the same manner as if the said deed or act was made or done by a legal owner of full age; and such executor, administrator, guardian or trustee shall account to those interested upon their respective bonds, for the amount paid him in pursuance of such agreement and composition; and if the said company and parties representing lands prefer, they may refer the question of compensation to arbitrators, mutually chosen, whose award or that of their umpire, in case of disagreement, shall vest title according to its terms.

Condemnation of land.—Notice.

SEC. 8. And be it further enacted, That if the said company cannot agree with the owner of the land through which they desire said road to pass, or with the executor, administrator, guardian, or trustee, it shall and may be lawful for the clerk of the Circuit Court of the County in which said land lies, on the application of said company or its agents; and he is required to issue a writ of ad quod damnum, commanding the Sheriff that without delay he cause a jury of six good and lawful men to be upon such land on a day to be by said Sheriff fixed and appointed, and whereof, it shall be his duty to give notice to the owner, executor, administrator, guardian or trustee, at least five days before such day, if they be within his County, or if not, or if the owner or owners be unknown, then notice shall be given by advertisement, to be by said Sheriff posted and fixed at the dwelling house, if such there be, or in a public and conspicuous place at least five days before such appointed day, and also by advertising the same in some newspaper published nearest the land, at least three weeks by weekly insertions, prior to said day, and then cause said jury,

after being duly sworn by said Sheriff or Justice of the Peace, to make true inquest of the damage that will be sustained by such owner or estate, by reason of making said road through such land. If any such juror shall fail to appear, or by reason of challenge, for cause or otherwise, fail to sit on said inquest, the said Sheriff shall fill said jury from the bystanders, and if they fail to render a verdict, the said Sheriff shall again, on the same or a subsequent day, empannel a new jury or jurors, until a verdict be had. Such verdict and inquest regularly certified by such Sheriff, shall be returned to the office of the clerk of the Circuit Court of the County in which said land may be, and there remain among the records, and such verdict shall vest in said company the right to occupy and use such land for the purposes of said railroad on the payment or tender of payment of the damages thereon assessed against said company; and in case of persons absent or unknown as aforesaid, the placing of the amount of such damages to the credit of the owner in the hands of Judge of the County Court of the County in which such lands may lie, shall be deemed and taken as payment, and such Judges shall be liable on their bonds to make due payment of said money on demand.

Duty of Sheriff.—Penalty for failure to discharge it.

SEC. 9. And be it further enacted, That it shall be the duty of the Sheriff to appoint and hold said inquest within ten days after the receipt of said writ of ad quod damnum, except in cases of absence aforesaid, in which case, thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under said writ, and for every default therein, the said Sheriff shall be fined by the Circuit Court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned, shall be fined not less than ten dollars for non attendance; of all such fines, as well as costs, the Circuit Court of the County shall have jurisdiction. There shall be allowed the following fees: To the Clerk of the Circuit Court for every writ of ad quod damnum, seventy-five cents; for receiving and filing inquest, seventy-five cents; to the Sheriff for giving notice, seventy-five cents, besides printer's fees not exceeding two dollars in each case; for holding inquest, five dollars, and for summoning witnesses twenty-five cents each; to jurors, seventy-five cents per diem each, which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of costs and paid by the company: *Provided, however*, That before the application for said writ, the said company may make a tender to the owner or owners of any such land, a sum of money by them deemed equivalent to the damage to be sustained, and upon refusal to accept the sum tendered, and a verdict for the same amount or a less sum, the costs shall be

taxed to and paid by the owners of the land upon which inquest is held.

Powers of Company.

SEC. 10. And be it further enacted, That said company is hereby authorized to construct, erect, build and use a single, double or treble railway or road, of suitable width and dimensions, to be determined by the Directors of said Company, on the line or course by them designated, and also under the same rules and regulations and restrictions, and with the like privileges and immunities as are herein granted to the main railroad to build and construct branch railroads on either side of the main road, not exceeding thirty miles, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken, and carried on the same; and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns as they may deem suitable for their interest.

Usefulness of Roads and Streams not to be impaired.

SEC. 11. And be it further enacted, That whenever it shall be necessary for the construction of their single, double or treble railroad or way, to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said Company to construct across or upon the same: but the said Company shall restore the said stream or water-course, or road or highway, thus intersected, to its former state, or in sufficient manner not to impair its usefulness; and in all cases where any road or public highway is so located that said railroad cannot be judiciously laid out and constructed across or upon the same without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner that said railroad may be made on the best site of ground for that purpose. *Provided*, Said corporation shall put such road in as good repair as at the time of changing or altering the same.

Charges of transportation.

SEC. 12. And be it further enacted, That it shall be lawful for the Company hereby incorporated, from time to time, to fix, regulate and receive the toll and charges by them to be received for transportation of persons or property on their railroad or way aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof.

Penalty for injuring road.

SEC. 13. And be it further enacted, That if any person or persons will or shall wilfully do, or cause to be done, any act or acts whatsoever, whereby any building, construction or works of said

Company, or any engine, machine, or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said Company double the amount of damages sustained by reason of such offences or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

Stock—how to be paid.

SEC. 14. And be it further enacted, That the directors of said Company may require the payment of the sum or sums subscribed to the capital stock of said Company, at such times and in such proportions, and upon such conditions, as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the Board of Directors, the stock of such stockholders, or so much thereof as shall be necessary, may be sold by the directors of said corporation at public auction, after the lapse of ninety days from the time when the payment became due; and the surplus money, the avails of such sale, after deducting the payment due and interest thereon, and the necessary expenses of sale, shall be paid over to said delinquent stockholders.

Property subject to taxation.

SEC. 15. And be it further enacted, That the property owned by the said Company shall at all times be subject to taxation, in the same manner and to the same extent as similar property owned by private individuals.

SEC. 16. And be it further enacted, That if the railroad shall not be commenced in five years from the passage of this act, and shall not be finished within this State in ten years from the time of the commencement thereof, then this act shall be null and void.

Approved, February 4, 1848.

And whereas, the State of Mississippi is desirous to aid in accomplishing the objects of the said act, therefore,

Line of Mobile and Ohio Railroad Extension through Mississippi.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That the railroad described in the above recited act be extended in the State of Mississippi from the Alabama line to the State of Tennessee, in such a direction and on such a route as shall be deemed most expedient; and that as to said extension there is granted to the said Mobile and Ohio Railroad Company, when organized, the same rights, powers and privileges as are granted to it within the State of Alabama by the same act, subject, however, to the same and similar conditions, restrictions, modifications and provisions as are in said act above recited, contained and

set forth, excepting the provision contained in section 15 of said act; and the said act is hereby concurred in and adopted within the State of Mississippi in reference to the said Mobile and Ohio Railroad Company, with the exception of that portion contained in section 15, as before stated: Provided, that in case of persons absent or unknown whose lands may be condemned, pursuant to sections 7, 8 and 9 of said recited act, the placing of the amount of the damages assessed to the credit of the owner in the hands of the State Treasurer shall be taken as payment, and on such owner appearing or tendering satisfactory evidence of his claims thereto, such damages shall be paid him by the Treasurer on the warrant of the Auditor of Public Accounts.

Section 2. Be it further enacted, That the said Mobile and Ohio Railroad Company shall have full power and authority to cross with their railway tracks any railroad in the State of Mississippi which may have been chartered prior to the passage of this act.

Section 3. Be it further enacted, That whenever any portion of said railroad shall be completed through this State and is paying an interest of eight per cent. per annum on its cost, and not before, such portion may be taxed the same per centage, and no more, upon the capital expended in the construction thereof as lands in this State shall be taxed.

Section 4. Be it further enacted, That so much of the eighth section of the above recited act of the Legislature of the State of Alabama which requires certain damages therein mentioned to be placed at the credit of the owner in the hands of the County Treasurer of the counties in which such land may lie, be repealed, and that all such damages shall be placed in the hands of the County Treasurer in which the land may lie; and such deposit in the hands of each County Treasurer shall be deemed and taken as payment, and each County Treasurer shall be liable on their official bonds to make due payment of said money on demand.

Approved, February 17, 1848.

Chapter 106.

An Act to enable the counties through which the Mobile and Ohio Railroad may pass, or which may be contiguous to the same, to subscribe for and hold stock in the same, and for other purposes.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That the Police Court of any County through which the Mobile and Ohio Railroad may pass, and for any County lying contiguous to the same, may, and it is hereby made lawful for said Court to subscribe for stock in the same, as is hereinafter provided for, and to hold such stock in her corporate capacity upon the

same terms and under the same restrictions individuals are subjected to.

Section 2. Be it further enacted, That before any Police Court shall be permitted to subscribe for stock in the name of the County it is hereby made the duty of said Court to call for the approbation of the legal voters of their County, by advertising an election to be held by the Sheriff of the County, giving at least thirty days notice of the same, such notice to be posted up at every election precinct in the County, which notice shall always state the amount of stock which the Court may propose to take or subscribe for; and if a majority of two-thirds of the votes polled be "for subscription," then and in that case, the President of the said Court may, and it is hereby made his duty to convene the Board of County Police, and make the necessary arrangement to carry into effect the will of a majority of two-thirds of the voters of the County; but if a majority of two-thirds of the votes polled be "no subscription," then the question as to the propriety of subscribing for stock, as before provided for, shall not be again proposed by the Court until after the expiration of six months, and then at the option of said Court.

Section 3. Be it further enacted, That the several Boards of County Police are hereby authorized from time to time to levy a special tax for the purpose of paying for stock subscribed for in the before mentioned "Mobile and Ohio Railroad," according to the provisions of this act; Provided, however, that the said Courts are hereby prohibited from levying and collecting any special tax for the before mentioned purpose in greater sums than are necessary to pay for such stock, by advancing from time to time such a per cent. on stock subscribed for as the Board of Directors of said railroad company may demand and require to be paid by individual stockholders.

Section 4. Be it further enacted, That the County or Counties that may avail itself or themselves of the provisions of this act, shall through the Police Court or Courts elect upon what portion of said road the moneys herein provided to be raised shall be expended, which shall always be within the County by which such stock is taken, or as near thereto as may be practicable.

Section 5. Be it further enacted, That for the purpose of meeting any unexpected demand on the part of the Board of Directors of the company, at a time when the County may have no special tax on hand, the Board of Police may order an issue of County warrants, having not more than twelve months to run to maturity and bearing a rate of interest not exceeding ten per centum per annum.

Section 6. And be it further enacted, That the provisions of the foregoing act are hereby extended to any County in this State which may desire to avail themselves of the foregoing provisions, for the purpose of aiding in the construction of any railroad

which does or may hereafter be laid out to run through the County or contiguous thereto.

Approved, March 6, 1850.

Chapter 42.

An Act to be entitled, An Act to amend an Act to enable the Counties through which the Mobile and Onio Railroad may pass, or which may be contiguous to the same, to subscribe for and hold stock in the same, and for other purposes; approved, March 6, 1850.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That it shall be, and is hereby made the duty of the tax collector of each County of this State, in which the people of said County have, or may hereafter, in accordance with the above recited act, impose a tax upon themselves for the purposes of aiding in the construction of the Mobile and Ohio Railroad to issue to each tax payer a separate receipt for the amount of said Railroad tax.

Sec. 2. Be it further enacted, That it shall be, and is hereby made the duty of the President of the Board of Police for each of the aforesaid counties, on the presentation of the amount of one hundred dollars of said railroad receipts, to receive and file the same, and transfer one share of the stock subscribed for in the Mobile and Ohio Railroad Company by said county, to the individual so presenting said receipt.

Sec. 3. Be it further enacted, That the said railroad tax receipts provided for in this act, shall be and is hereby made transferable by delivery.

Sec. 4. Be it further enacted, The sheriffs and tax collectors of the counties which have, or may subscribe for stock in said railroad, shall be, and they are hereby required, each to keep a book containing the names of each tax payer, and the amount of taxes paid by each, under the several assessments made by the Board of Police; and it shall be his duty to return said book, duly certified, or a certified copy thereof, regularly, to the Board of Police of his county, after the collection has been completed under such assessments, and such book, so made out and returned as aforesaid, shall be conclusive evidence of the facts and entries therein made for all purposes whatsoever.

Sec. 5. Be it further enacted, That all the laws now in force defining the duties of the sheriff or tax collector as to insolvent and defaulting tax payers, are hereby declared to be in full force, and that in all cases of defaulting tax payers, the sheriff or tax collector shall distrain, advertise and sell real or personal estate, in the same manner as is now required by law for the collection of State and county taxes in default, and that all the laws now in force providing for the collection of State and county taxes, in

cases of default, shall be, and are hereby declared to be in full force and effect for the purposes of collecting the taxes provided for in the act to which this is an amendment, and that the sheriff or tax collector shall receive the same rate of compensation or pay for his services as is now provided by law for the collection of county taxes.

Sec. 6. Be it further enacted, That it shall be the duty of the sheriff or tax collector, before he enters upon his duty of collecting said taxes, to execute a bond, with two or more good and sufficient securities, to be approved of by the President of the Board of Police, and payable to the President of the Board of Police and his successors in office, conditioned that he will well and truly collect, keep safely, and pay over to the order of the President of the Board of Police, all money collected by him under this act, and the act to which this is an amendment. Said bond shall be in the penal sum of double the amount of taxes assessed and ordered to be collected, and the same may be sued upon in the name of the President of the Board of Police or his successor or successors, for the use of any person or persons, or corporate body, aggrieved or injured by any breach of the conditions of the same.

Sec. 7. Be it further enacted, That this Act shall take effect and be in force from and after its passage.

Approved March 4, 1852.

Plaintiff then introduced and read as evidence all the orders made by the Police Court enabling the vote to be taken on the tax question, and all the other orders appertaining to the said railroad tax and the funds raised by it, made by the Police Court aforesaid, also the return of the sheriff of the vote polled at the election, also his return of the taxes collected, as follows, to wit.

Order of Board of Police.

The State of Mississippi, } *ss.*
Pontotoc County. }

In the Police Court of said county. at the April Term, 1852: Be it remembered, that at a term of the Police Court, of the county and State aforesaid, begun and held at the Court House in and for said county, on the 12th day of April, 1852, among other orders and decrees then and there made and recorded, was one in the words and figures following, to wit:

Ordered, By the Board of Police of Pontotoc, that the sheriff of said county hold an election at the several precincts of this county, on Saturday, the 12th day of June next, to take the sense of the people of said county on the propriety of the Board of Police of said county subscribing for one hundred thousand dollars on the part of the people of said county, to the Mobile and

Ohio Railroad, and that the sheriff conduct said election in pursuance of the Statute of this State, and an Act of the Legislature, approved March 6th, 1850, entitled an "Act to enable the counties through which the Mobile and Ohio Railroad may pass, or which may be contiguous to the same, to subscribe for and hold stock in the Mobile and Ohio Railroad, and for other purposes."

And it is further Ordered, That the sheriff give notice of the said election, by posting up copies of this order at the several precincts in said county, at least thirty days previous to said election.

And it is further Ordered, That the following persons be appointed Judges of said election at the following precincts, to wit:

At Rockford precinct—S. S. Tyre, Willis Jones, and Thomas Gafford.

At Furguson's precinct—A. H. Furguson, R. A. Gilliam, and Thomas Bridges.

At New Albany precinct—M. Wilson, A. Morgan, and W. D. Robbins.

At Chester precinct—John Hall, John Tate, and Thomas Harvey.

At Robertson's precinct—John McFale, M. S. Hutchinson, and William Bevill.

At Glasgow precinct—H. Kirkwood, John Price, and S. Freeman.

At Cherry Creek precinct—J. C. Allen, Wm. Robison, and H. T. Pitts.

At Pontotoc precinct—H. Goodrich, T. L. Harris, and C. W. Martin.

At Cobb's precinct—John Morrow, S. Bigham, and G. W. Smith.

At Ellistown precinct—G. B. Roberts, William T. Hall, and Elijah Baker.

At Birmingham precinct—William Lawson, Jenk Jones, and R. Wiley.

At Poplar Spring precinct—B. R. Wade, J. W. Burns, and R. Hanna.

At New Hope precinct—Blake Falkner, Elijah Stanford, and M. Turner.

At Tocksish precinct—Mark Stewart, H. Duke, and William Spencer.

At Mallory's precinct—Thomas Mallory, David Prude, and John Shannon.

At Harrisburg precinct—John W. Cumby, James Sample, and Wm. R. Harris.

At Chesterville precinct—J. M. Wylie, Thomas Camp, and James Johnston, Sr.

At Palmetto precinct—Joseph Alsup, B. S. Edwards, and W. H. Calhoon; and should the people decide to take stock in said

road, it shall be subscribed and paid for in ten annual instalments, and that the sheriff make due return to the Board.

August Term, 1852.

The following order was made:

William W. Bell, Sheriff of Pontotoc county, presented to the Board his return of the railroad election, reporting one thousand and forty-three to have voted "For Subscription," and three hundred for "No Subscription," which was received and ordered to be recorded.

The State of Mississippi,
Pontotoc County.

By order of the Honorable Board of Police of said county, I proceeded on the 12th day of June, A. D. 1852, to hold an election at the several precincts in the county aforesaid, for the purpose of taking the sense of the people of said county, upon the subject of taking one hundred thousand dollars worth of stock in the Mobile and Ohio Railroad, whereupon the following number of votes were polled, to wit:

For Subscription.		*No Subscription.*	
Pontotoc Box,	144	Pontotoc,	27
Cherry Creek,	72	Cherry Creek,	1
New Albany,	122	New Albany,	42
Furguson's,	00	Ferguson's,	00
Rocky Ford,	23	Rocky Ford,	70
Chester,	2	Chester,	32
Robertson's,	8	Robertson's,	22
Glasgow,	4	Glasgow,	33
Tocksish,	26	Tocksish,	19
New Hope,	35	New Hope,	3
Prairie Grove,	116	Prairie Grove,	00
Palmetto,	82	Palmetto,	00
Chesterville,	80	Chesterville,	08
Harrisburg,	82	Harrisburg,	00
Birmingham,	132	Birmingham,	00
Ellistown,	56	Ellistown,	01
Poplar Spring,	49	Poplar Spring,	22
Cobb's,	10	Cobb's,	20

I, W. W. Bell, Sheriff of Pontotoc county, certify that the above is a true and correct statement of the votes polled at an election held on the 12th day of June, by order of the Honorable Board of Police of Pontotoc county, for the purpose of taking the sense of the people of said county on the subject of taking one hundred thousand dollars worth of stock on the Mobile and Ohio Railroad.

Given under my hand and seal this day, August 2d, 1862.

W. W. BELL, *Sheriff.*

August Term, 1852.

Ordered, by the Board, that the following taxes be levied for the purposes specified, to wit: Fifty per cent. on the State tax for common county purposes; seventeen per cent. on the State tax for the benefit of paupers; sixty-three per cent. on the State tax for common schools; and two hundred per cent. on the State tax for payment of subscription to the Mobile and Ohio Railroad, and that the sheriff of said county collect the taxes above levied.

November Term, 1853.

The agent of the Mobile and Ohio Railroad appeared in Court and advocated the propriety of the Board subscribing for the stock in the said road, but the Board declined making the subscription.

January Term, 1854.

Ordered, by the Board, that the president withhold the money collected by the sheriff for the Mobile and Ohio Railroad. Ordered, by the Board, that the sheriff receive in payment for the taxes due for the fiscal year, ending 1st May, 1854, the outstanding receipts given for taxes assessed for the use of stock in the Mobile and Ohio Railroad.

The State of Mississippi, } *ss.*
Pontotoc County. }

I, Drury J. Pitts, clerk of the Probate Court of said county, do hereby certify that the foregoing five pages contain a true and perfect transcript of the original proceedings had in the cause therein stated; as fully and completely as the same remain of record in my office.

In testimony whereof, I have hereunto set my hand and the [SEAL.] seal of said Court, at my office, this the 28th day of January, A. D. 1854.

DRURY J. PITTS, *Clerk.*

Bond of W. W. Bell.

Know all men by these presents, that we, William W. Bell, sheriff and collector of Pontotoc county, State of Mississippi, and E. C. Bell, Sam'l J. High, William D. Holder, and Richard A. Pinson, sureties, are held and firmly bound unto the State of Mississippi, for the use of said county, in the penalty of twenty thousand dollars, for whose payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, sealed and dated this the 20th day of December. 1852. Yet on this condition, that if the said William W. Bell, sheriff, &c., shall well and truly collect, and faithfully account for and pay over according to law the special county levy for the present fiscal year of two hundred per centum on the State tax for the said county, to aid in the construction of the Mobile and

Ohio Railroad, then this obligation is to be void, otherwise it is to remain in full force.

W. W. BELL. [SEAL.]
E. C. BELL, [SEAL]
S. J. HIGH, [SEAL.]
W. D. HOLDER, [SEAL.]
R. A. PINSON, [SEAL.]

Approved this 20th day of December, 1852.

G. G. RENEAU,
President of the Board of Police of Pontotoc County, Miss.

Order of Board of Police.

The State of Mississippi, } Special Term,
Pontotoc County, *ss.* } December 22d, A. D. 1856.

The Board of Police of said County, met at the Court-house thereof, Monday December 22d, 1856. Present L. J. Langston, Daniel Alsup, P. A. Vance and James R. Gray.

D. J. PITTS, *Clerk.*
W. W. BELL, *Sheriff.*

Upon motion, it is ordered by the Board, that Daniel Alsup be elected president, pro tempore.

This day appeared in open Court before the Board, J. Robins, attorney for the Mobile and Ohio Railroad Company, and on behalf of said Company, submitted to the Board a proposition to compromise the suit between the said Railroad Company and the County of Pontotoc, and the Board of Police of said County, involving the question of the liability of said Court for the subscription of one hundred thousand dollars of stock in said Railroad Company, said suit now pending in the High Court of Errors and Appeals of Mississippi, upon the following terms, viz.:

Said Railroad Company to dismiss their suits now pending, and to release all claim against said County on account of any liability for stock heretofore voted by the people of said County, to be taken by this County in said Railroad Company, upon the condition that the said Board of Police will pay over as a bonus to said Railroad Company, or to their attorney or agent, the sum of money heretofore collected by the Sheriff of Pontotoc County under the Order of the Board of Police of said County, for the purpose of paying for stock in said Company, amounting to between nine and ten thousand dollars, and after due consideration of said proposition, it is determined and ordered by the Board, that said proposition to compromise be accepted and acceded to by the Board; and, that upon the filing with the Clerk of this Court a certified copy of the orders and action of the Board of Directors of said Railroad Company, showing that said Compromise is sanctioned and authorized by said Company, and that said

Company have released said County from all further liability as before recited, and have in all things complied with the terms of said compromise on their part. The President of this Board shall in writing order and direct the Sheriff of said County of Pontotoc to pay over to said Railroad Company, or the attorney or agent of said Company, the amount of money so collected as aforesaid.

State of Mississippi, }
Pontotoc County. }

I, D. J. Pitts, Clerk of the Probate Court of said County, do hereby certify that the foregoing pages contain a true, and perfect copy of the original, as the same remains on record in my said office.

Given under my hand and the seal of said Court at office, this 24th October, 1857.

D. J. PITTS, *Clerk.*

Report of J. T. Williams.

Honorable Board of Police:

The undersigned begs leave to submit the following papers, made on the 22d day of June, 1857, to carry out a compromise between the Mobile and Ohio Railroad Company and the County of Pontotoc, which compromise was authorized by your order, passed on the 22d day of December, 1856, to wit: a release from all liability on account of alleged subscription for stock in said Company by said County, and the attorney's order dismissing said suits, June 22d, 1857.

J. T. WILLIAMS,
President, Board of Police.

Whereas a controversy has heretofore existed between the Mobile and Ohio Railroad Company, and the Board of Police of Pontotoc County, Mississippi, as to the liability of said County on an alleged subscription by said County, for one thousand shares of the capital stock in said Company; and whereas, it has been agreed between said Company and said County, to compromise and adjust said controversy by said County paying to said Company an amount of money heretofore collected by the Tax Collector of said County, for the purpose of paying for stock in said Company as a bonus to said Company, and for and in consideration of a release from the payment of the balance of the alleged subscription.

And said Company on their part releasing and discharging the County of Pontotoc aforesaid, from all further liability on account of said alleged subscription for stock, and, dismissing all suits heretofore instituted and now pending between said Company and said County, or Board of Police.

And whereas, the President of said Board of Police of Pontotoc County, by virtue of an order of said Board, made on the 22d day of December, A. D. 1856, has issued his order to W. W. Bell, the Sheriff and Tax Collector of said County of Pontotoc, requiring him to pay over said amount of money so collected, to said Railroad Company, or its authorized agent. Now therefore, the undersigned, the duly empowered agent and attorney in fact for said Mobile and Ohio Railroad Company, by virtue of authority in him vested by an order and resolutions, adopted by the President and Directors of said Company on the 3d day of June, A. D. 1857, in consideration that the President of said Board of Police has issued and delivered, and ordered on the said Sheriff and Collector, for said sum of money collected as aforesaid, do hereby, for and on behalf of said Railroad Company, release and discharge said County of Pontotoc, from all further liability on account of the said alleged subscription for stock in said Railroad Company, and from all liability to said Railroad Company, on account of any action of the Board of Police of said County, in relation to said supposed subscription for stock. And do hereby direct Jeptha Robins, Attorney and Solicitor for said Railroad Company, to dismiss all suits of every kind and description now pending between said Railroad Company and said County, or the Board of Police thereof. And also, as said agent and attorney in fact for said Railroad Company, have and do hereby and herewith file my power of attorney, it being a certified copy of an order of the President and Directors of said Mobile and Ohio Railroad Company.

In testimony whereof, the undersigned, agent and attorney of said Railroad Company, the President of Board of Police of Pontotoc County as aforesaid, and also the attorneys for and against the Company aforesaid, do each and in the presence of each, subscribe our names and affix our seals respectively, this the 23d day of June, A. D. 1857.

JAMES WHITFIELD, [SEAL.]
Agent of M. & Ohio R. R. Co.
J. ROBINS, [SEAL.]
Att'y for Mobile & Ohio R. R. Co.
HUGH R. MILLER, [SEAL.]
Att'y for Board Police, Pontotoc County.

Order of Police.

Ordered, by the Board, that the report of J. T. Williams, President of the Board of Police, submitting the compromise between the Mobile & Ohio Railroad Company and the Board of Police of Pontotoc County, made on the 22d day of June, 1857, be adopted and ratified, and that the papers are hereby ordered to be filed.

And plaintiff closed his testimony.

Defendant then introduced as evidence, an order of the Board

of Police, requiring him as collector to withhold the taxes collected by him for railroad purposes.

Ordered, by the Board, that the President withhold the money collected by sheriff, for the Mobile & Ohio Railroad.

Defendant then introduced as testimony an order of the Police Court of said county, restraining the sheriff from collecting any further taxes for railroad purposes.

Defendant then introduced the order of the Board authorizing defendant to receive the certificates of railroad tax for county tax, &c.

Ordered, by the Board, that the sheriff receive in payment of the taxes due for the fiscal year ending 1st May, 1854. The outstanding receipts given for taxes assessed for the use of stock in the Mobile & Ohio Railroad.

Next the order authorizing the treasurer to receive them from him for county and special taxes.

Ordered, by the Board, that the County Treasurer in settling with the sheriff and tax collector, receive in payment of county and special taxes the railroad receipts, or receipts heretofore given for taxes paid on account of the supposed subscription to the Mobile & Ohio Railroad Company which have been received by said sheriff under the order of this Board from said sheriff and tax collector, and credit him with the amount of said receipts on delivery of the same to him, and that said treasurer keep and preserve said receipts without erasure or cancellation, subject to the further order of the Board, and if the amount of said receipts collected by said sheriff exceed the amount of county and special taxes, then said sheriff shall be allowed for any balance of said receipts in settling for the pauper tax collected for the year 1853.

Defendant then introduced one Carr, treasurer of county, who testified that, as treasurer he had received thirty-one hundred dollars from Bell, of railroad receipts and for which amount Bell was allowed credit on the county and special taxes.

Defendant next introduced and read as evidence an instrument showing the compromise between the Mobile & Ohio Railroad and the Board of Police of Pontotoc County, in reference to the Railroad tax.

Compromise.

Whereas, a controversy has heretofore existed between the Mobile & Ohio Railroad Company and the Board of Police of Pontotoc County, Mississippi, as to the liability of said county on an alleged subscription by said county, for one thousand share of the capital stock in said company, and whereas it has been agreed between said company and said county, to compromise and adjust said controversy, by said county paying to said com-

pany an amount of money heretofore collected by the tax collector of said county, for the purpose of paying for stock in said company as a bonus to said company and for and in consideration of a release from the payment of the balance of the alleged subscription.

And said company on their part releasing and discharging the County of Pontotoc, aforesaid, from all further liability on account of said alleged subscription for stock, and dismissing all suits heretofore instituted and now pending between said company and said county, or Board of Police.

And whereas, the President of said Board of Police of Pontotoc County, by virtue of an order of said Board, made on the 22d day of December, A. D. 1856, has issued his order to W. W. Bell, the sheriff and tax collector of said County of Pontotoc, requiring him to pay over said amount of money so collected, to said railroad company or its authorized agent. Now, therefore, the undersigned, the duly empowered agent, and attorney in fact for said Mobile & Ohio Railroad Company, by virtue of authority in him vested by an order and resolution adopted by the President and Directors of said company, on the 3rd day of June, A. D. 1857, in consideration that the President of said Board of Police has issued and delivered an order on the said sheriff and collector, for said sum of money collected as aforesaid, do hereby, for and on behalf of said railroad company, release and discharge said County of Pontotoc from all further liability on account of the said alleged subscription for stock in said railroad company, and from all liability to said railroad company, on account of any action of the Board of Police of said county, in relation to said supposed subscription for stock.

And do hereby direct Jeptha Robins, attorney and solicitor for said railroad company, to dismiss all suits of every kind and description now pending between said railroad company and said county, or the Board of Police thereof. And also as said agent and attorney in fact for said railroad company, have and do hereby and herewith file my power of attorney, it being a certified copy of an order of the President and Directors of said Mobile & Ohio Railroad Company.

In testimony whereof, the undersigned, agent and attorney of said railroad company, the President of Board of Police of Pontotoc County as aforesaid, and also, the attorneys for and against the company aforesaid, do each, and in the presence of each, subscribe our names and affix our seals respectively, this the 22d day of June, A. D. 1857.

JAMES WHITFIELD, [SEAL.]
Agent of M. & O. R. R. Co.
J. ROBINS, [SEAL.]
Att'y for Mobile & Ohio Railroad Company.
HUGH R. MILLER, [SEAL.]
Att'y for Board of Police, Pontotoc County.

Order of Compromise.

This day appeared in open Court before the Board, J. Robins, attorney for the Mobile and Ohio Rail Road Company and on behalf of said Company, submitted to the Board a proposition to compromise the suit between the said Rail Road Company and the County of Pontotoc, and the Board of Police of said County, involving the question of the liability of said County for the subscription of one hundred thousand dollars of stock in said Rail Road Company, said suit now pending in the High Court of Errors and Appeals of Mississippi, upon the following terms, viz.:

Said Rail Road Company to dismiss their suits now pending, and to release all claim against said County, on account of any liability for stock heretofore voted by the people of said County, to be taken by the County in said Rail Road Company upon the condition that the said Board of Police will pay over as a bonus to said Rail Road Company or to their attorney or agents, the sum of money heretofore collected by the Sheriff of Pontotoc County under the order of the Board of Police of said County for the purpose of paying for stock in said Company, amounting to between nine and ten thousand dollars, and after due consideration of said proposition, it is determined and ordered by the Board, that said proposition to compromise be accepted and acceded to by the Board, and that upon the filing with the Clerk of this Court, a certified copy of the orders and action of the Board of Directors of said Rail Road Company, showing that said compromise is sanctioned and authorized by said Company, and that said Company have released said County from all further liability as before recited, and have in all things complied with the terms of said compromise on their part, the President of this Board shall in writing order and direct the Sheriff of said County of Pontotoc to pay over to said Rail Road Company, or the attorney or agent of said Company the amount of money so collected as aforesaid.

Defendant next introduced, and read as evidence to the Jury, a Supplemental Bill filed by plaintiff against the defendant in the Vice Chancery Court at "Holly Springs," in the Northern District of Mississippi.

Supplemental Bill.

To the Honorable James F. Trotter, Vice Chancellor of the State of Mississippi for the Northern District thereof, presiding at Holly Springs.

Humbly complaining. Your Orators, the Mobile and Ohio Rail Road Company, showeth unto your Honor by leave of the Court first had and obtained for that purpose, by way of Supplement to the Bill of Complaint heretofore filed and Injunction granted

against the Board of Police of Pontotoc County and W. W. Bell, Sheriff and Tax collector of Pontotoc County. That since the filing of the original Bill of Complaint in this case, your Orators and the Board of County Police of Pontotoc County have compromised and arranged the matter in controversy in the original Bill so far as the said Board of Police and the County of Pontotoc are concerned in reference to the alleged subscription of Pontotoc County for the shares of your Orators' capital stock therein mentioned, in consideration of which compromise I, T. Williams, President of the Board of Police by virtue of his office as such and under the direction and order of the Board of Police, on the 22d day of June, 1857, gave your Orators an order in writing on W. W. Bell, Sheriff and Tax collector of Pontotoc County, who is one of the defendants to the original Bill, to pay to your Orators the money collected by him under the order of the Board of Police of Pontotoc County for the purpose of paying for stock in the Mobile and Ohio Rail Road Company, a copy of which order is hereto appended, marked A, and made a part hereof. The original will be produced upon the hearing if required.

Your Orators would further state to your Honor that they presented said order to the said defendant W. W. Bell, who refused to accept or pay the same and suffered said order protested for non-acceptance and non-payment, notwithstanding he admitted that he had collected under the said order of the Board of Police the sum of eight thousand eight hundred and seventy-three dollars and sixty-two cents after deducting his commissions for collecting the same.

Your Orators would further state and show unto your Honor, that since the filing of the original Bill in this cause, they have discovered that the said W. W. Bell in entering upon the discharge of his trust, in the collection of the money under and by virtue of the order of the Board of Police referred to in the original Bill, failed to execute a bond as required by law, payable to the President of the Board of Police of said County of Pontotoc and his successors in office. But on the contrary thereof executed his bond on the 20th day of December, 1852, payable to the State of Mississippi for the use of said County, as will more fully appear by reference to a certified copy of said bond herewith filed, marked exhibit B, and made a part hereof.

Your Orators would further charge that the said W. W. Bell, Sheriff and Tax collector, has failed and refused to pay the money collected by him as aforesaid. Admitting at the time demand was made that he had the amount aforesaid then in his possession collected under the said order, but refusing to pay, in utter disregard of the directions of the Police Court and the order of the President thereof, and the rights of your Orators.

And forasmuch as your Orators are advised that in consequence of the failure of the said Bell to execute such a bond as

he was required by law to do. Their remedy against the said Bell as sheriff and tax collector is not full and complete at law, upon the bond executed by said W. W. Bell and his securities, here exhibited. Your Orators would therefore pray your Honor to order and decree that the said W. W. Bell, sheriff and tax collector as aforesaid, pay over to your Orators the money collected by him as aforesaid, with interest and damage, and for such other and further relief as to your Honor may seem proper, and the nature of the case may require, and as in duty bound, your Orators will ever pray, &c.

J. ROBINS,
Solicitor for Complainants.

The State of Mississippi,
Itawamba County.

Before me, J. T. Covy, member of the Board of Police of said County, this day personally appeared J. Robins, attorney for the Mobile and Ohio Rail Road Company, and made oath that the facts stated in the foregoing Supplemental Bill, as stated upon the personal knowledge of complainants are true and those stated as upon information he believes to be true.

J. ROBINS.

Sworn to and subscribed before me,
this 4th day of July, A. D. 1857,
J. T. Covy,
Member of Board of Police.

Exhibit A.

Exhibit A, to supplemental bill is in the words and figures following, to wit:

Pontotoc, Mississippi,
June 22d, 1857.

To W. W. Bell, sheriff and tax collector of Pontotoc county:

You will please pay to the Mobile and Ohio Railroad Company, or the attorney and agent of said Company, the sum of money heretofore collected by you, under the order of the Board of Police, of Pontotoc county, for the purposes of paying for stock in said Company, and this shall be your warrant for the same.

(Signed,) J. L. WILLIAMS,
President Board of Police.

Exhibit B.

Exhibit B, to supplemental bill, is in the words and figures following, to wit:

Know all men by these presents, that we, William W. Bell sheriff and collector of Pontontoc county, State of Mississippi, and

E. C. Bell, Samuel J. High, William D. Holder and Richard A. Pinson, securities, are held and firmly bound, unto the State of Mississippi, for the use of said county, in the penalty of twenty thousand dollars, for whose payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally sealed and dated, this 20th day of December, 1852. Yet on this condition, that if the said William W. Bell, sheriff and collector, shall well and truly collect, and faithfully account for, and pay over according to law the specified county levy, for the present fiscal year, of two hundred per centum, on the State tax for the said county, to aid in the construction of the Mobile and Ohio Railroad, then this obligation to be void, otherwise it is to remain in full force.

W. W. BELL, [SEAL.]
E. C. BELL, [SEAL.]
S. J. HIGH, [SEAL.]
W. D. HOLDER, [SEAL.]
R. A. PINSON, [SEAL.]

Approved this 20th day of December, 1852.
G. G. RENEAU,
President of the Board of Police, of Pontotoc Co., Miss.

The State of Mississippi, } *ss.*
Pontotoc County. }

I, Drury J. Pitts, clerk of the Probate Court, of said county, do hereby certify, that the foregoing page contains a true and perfect transcript of the bond of W. W. Bell, of date 20th December, 1852, as fully and completely as the same remains of record, and on file in my said office.

In testimony whereof, I have hereto signed my name and fixed my official seal at office in Pontotoc this 29th day of June, 1857. [SEAL.]

D. J. PITTS, *Clerk.*

Defendant then introduced and read to the jury, a certificate of the clerk of the Supreme Court, showing that the said cause was affirmed in the Supreme Court of Mississippi, as follows:

Mandate.

State of Mississippi. } October Term, A. D. 1859.
High Court of Error and Appeals. } February 1st, 1860.

The Mobile and Ohio Railroad Company
vs.
W. W. Bell.

This cause coming on this day regularly to be heard upon the record, herein from the Chancery Court of Pontotoc county, and

the appellant failing to appear and prosecute the same, and there being no abstract or brief on file in behalf of said appellant, it is considered and so ordered, adjudged, and decreed, by this Court, that this cause be, and the same is hereby dismissed, for want of prosecution under the rule of this Court. It is therefore further considered and so ordered, adjudged and decreed, that the appellee do have and recover of the appellant, and J. Robins and George G. Reneau, sureties in the appeal bond, the cost of this cause in this Court, and in the Court below, expended, &c., to be taxed, &c.

I, Samuel Livingston, clerk of the High Court of Errors and Appeals, of the State of Mississippi, do hereby certify that the preceding is a true transcript of the final decree rendered by said High Court, in the case therein stated, at the October term thereof, in the year 1859, on the 1st day of February, A. D. 1860.

[SEAL.] In testimony whereof, I hereunto subscribe my name and affix the seal of said High Court, at the office at Jackson, this 18th day of February, A. D. 1860.

SAMUEL LIVINGSTON, *Clerk.*

And here said defendant closed his evidence.

Judge's Charge.

Whereupon the Court charged the jury as follows:

1st. In this case, gentlemen, if you believe from the evidence that an election was holden in the county of Pontotoc, in pursuance of law, and at said election a majority of the people or voters, of two-third, voted to take on behalf of the county, stock in the Mobile Railroad Company, to the amount of $100,000, and that in pursuance of said election, the money sued for was collected by the defendant, as the collector of taxes for the "County of Pontotoc, in the State of Mississippi," the money in the hand of Bell, vested in the Railroad Company, as soon as an order was made on the defendant by the President of the Board of Police, of the county of Pontotoc, to pay the money to the Railroad Company.

To the giving of all that part of the said charge following the phrase, "County of Pontotoc, in the State of Mississippi," the defendant then and there excepted, and tendered to the Court his bill of exceptions, which was then and there signed and sealed, and made a part of the record in the cause.

2d. The Court also gave the following charge: "The issuing the stock certificates, or the refusal to issue the certificates, is a matter or question with which the jury has now nothing to do; Mr. Bell, the defendant had no right to judge of the fact as to whether the stock had been legally subscribed for or not."

The defendant, by his counsel, excepted to all of the foregoing charge of the Court, and then and there tendered his bill of excep-

tions to the Court on account of the giving of the same, which the Court then and there signed and sealed and made a part of the record in the cause.

The Court then gave the following charge, to wit:

3d. "The Police Court were authorized by the Acts of the Legislature to submit the question or proposition of a subscription for stock, payable in instalments of from one to ten years was legal; that the Police Court had a right to submit such subscription for stock to the legal voters of the county of Pontotoc, and if a majority of two-thirds of such legal voters voted to take stock on such time, to be paid in such instalments. It, such election, was legal and obligatory, and the fact that the Railroad Company cannot collect the subscription in a shorter time than the time submitted to the legal voters in Pontotoc county, at the election, does not make the subscription void or voidable."

The defendant, by his counsel, excepts to that part of the charge which follows the recitation of facts in the same, and which reads as follows: "It, such election, was legal and obligatory, and the fact that the Railroad Company cannot collect the subscription in a shorter time than the time submitted to the legal voters of Pontotoc county at the election, does not make the subscription void or voidable," and then and there tendered to the Court his bill of exceptions to the same, which the Court then and there signed and sealed and made a part of the record in the cause.

The Court then gave the following charge, to wit:

4th. "The order of the Police Court of Pontotoc county, levying the tax to pay the subscription by the election; if you shall be of opinion that such election was legally holden, and that a majority of two-thirds of the legal voters of Pontotoc county voted in favor of a subscription for one hundred thousand dollars in stock on the time aforesaid, is a legal order, and obligatory until the same is reversed or set aside by an appellate tribunal," &c.

The defendant, by his counsel, excepted to the giving of this charge then and there, because it did not state the law correctly as applicable to the facts therein stated, and he then and there tendered his bill of exceptions to the same to the Court, which was by the Court signed and sealed and made a part of the record in the cause.

The Court then gave the following charge, to wit:

5th. "After the election, if the people, by the requisite majority, it became obligatory upon the Police Court to raise the money in accordance or pursuance of the Act of the Legislature; they, the Court, had no discretion or power to change, or modify, or alter what the people had done at the election."

The defendant, by his counsel, excepted to the following part of said charge, to wit: "It became obligatory on the Police Court

to raise the money in accordance or pursuance of the Act of the Legislature; they, the Court, had no discretion or power to change, or modify, or alter what the people had done at the election," and tendered his bill of exceptions to the same, which was then and there signed and sealed by the Court and made a part of the record in the cause.

The Court then gave the following charge to the jury, to wit:

6th. "That the order or orders of the Police Court are obligatory until they are reversed; whilst they are of record, unreversed, they are obligatory."

To all of which said charge the defendant, by his counsel, then and there excepted, and tendered his bill of exceptions to the Court, which was then and there signed and sealed by the Court, and made a part of the record in the cause.

The Court then gave the following charge, to wit:

7th. "The Police Court had no authority, except such as is derived from the Acts of the Legislature, and as such had no authority to make a compromise, their action on that subject is void and not obligatory on any one."

The Court then gave the following charge:

8th. "A corporation has no authority to contract, except such authority is expressly conferred by the Act of the Legislature, to confer the power on the corporation."

To the giving of which charges the defendant, by his counsel, then and there excepted, and then and there tendered this his bill of exceptions, which was then and there signed and sealed by the Court, and made a part of the record in this cause.

The defendant, by his counsel, then asked the Court to give the following charges:

The Mobile and Ohio Railroad Company
vs.
W. W. Bell.

1st. That the Act of the Legislature of the State of Mississippi, entitled "An Act to enable the counties through which the Mobile and Ohio Railroad may pass, or which may be contiguous to the same, to subscribe for and hold stock in the same, and for other purposes, approved the 6th day of March, A. D. 1850," and subsequently amended by "An Act, approved on the 4th day of March, A. D. 1852," was an authority special in its character, and derived expressly from the statute, and could only be exercised in the mode and after a strict compliance with the conditions prescribed in the Act and the amendments thereto, that the jurisdiction of the Board of Police or the President thereof over the *subscription for the stock and over the question of taxation* was special and limited, and the stock could only be subscribed for, and held upon the same terms and under the same restrictions as indi-

viduals are subjected to; and that before the Police Court shall be permitted to subscribe for stock in the name of the county, the Court had to call for and obtain the approbation of the legal voters of their county, in the mode prescribed in said Act; and that the Board of County Police were authorized from time to time to levy a special tax for the purpose of *paying for* stock *subscribed for* in said Mobile and Ohio Railroad, according to the provisions of said Act.

2nd. That unless stock was *subscribed for* and the necessary arrangements made to carry into effect the will of a majority of two thirds of the voters of the county, so that the county, according to the requirements of the act, in her corporate capacity, became a stockholder and corporator upon the same terms, and under the same restrictions as individuals are subjected to, then, said Board of Police had no power or authority to bind the county, or the legal voters thereof, in any other and different mode or levy, or to collect taxes to pay for stock not subscribed for and obtained.

3rd. That by the terms of said act the Board of County Police had no power or authority to submit to the legal voters of the county, or call for their approbation of any other or different kind of subscription than that authorized by and specified in the act, and if any other and different call, or approbation would be without authority and void, and that it was not competent for the Board of County Police to add to the times of submission, for the approbation of the legal voters of the county as to how or when the subscription was to be made and paid for.

4th. That the plaintiff is a corporation and had no power or authority to receive or accept a subscription for stock *from the county*, except in the special manner pointed out in said act enabling the counties to subscribe. That the act in question is an enabling act, it gives all the power in the premises that is possessed: and when it prescribes the mode of contracting, that mode must be observed, strictly pursued, or the agreement no more creates a contract, than if the plaintiff had never been incorporated, or the county authorized to subscribe.

5th. That a subscription for shares in said Railroad is a contract, and to be complete, valid, or binding as a contract, a due consideration must appear, and the criterion of liability of the subscriber is whether any act has been done by which the corporation has been compelled to receive the subscriber as a stockholder and unless the corporation was bound to admit the county as a subscriber, then there was not any legal or sufficient consideration to bind the county.

6th. That the Board of County Police was the mere *statutory agent* of the county, and of the legal voters, with declared, specified, and limited powers, and as such, had no power or authority to bind the principles in any other mode than that delegated by

the statute: and the county itself, and the legal voters had no power or authority in the premises, except which was given by the act of the Legislature, and that neither the Board of County Police, nor the legal voters of the county, could alter, change, or modify the mode of subscription prescribed by the Legislature, or *compromise* a disputed question as to whether the county should take the amount of stock which the Police Court had originally proposed to take or subscribe for and the amount submitted to, and voted upon by the legal voters of the county, or vote or pay away the *taxes collected*, for the purpose of being released from subscribing.

7th. That the Board of Police possessed no separate and independent power in the premises, apart from the approbation of the legal voters of the county, that the question had to be submitted to the legal voters of the county, who were to vote "*for subscription*," or "no subscription," and if the requisite majority of two-thirds of the votes polled, were "*for subscription*" then and in that case, it was made the duty of the President of said Board of Police (or court) to convene the Board of County Police, and make the necessary arrangement to carry into effect the will of a majority of two-thirds of the voters of the county, that in such case neither the Board of Police, nor the President thereof had power or authority to *compromise with the plaintiff when* "*no subscription*," or make any legal or valid contract, to pay any sum of money collected by way of taxes "for subscription," to be *let off* from subscription. That such agreement would be void.

8th. That by the terms of the act it was made the duty of the Police Court when calling for the approbation of the legal votes of the county, always to state the amount of stock which the court may propose to take or subscribe for: that such amount when voted for and approved cannot be varied at the pleasure of the plaintiff and the Board of Police by any separate agreement between them; that the legal voters and tax payers have a direct interest under the statute, and their "taxes to pay for stock subscribed for," cannot be appropriated in any other way than that submitted to and voted upon by them; that the subscription cannot be changed without their privilege or consent and that their "approbation" is an entire thing—one and indivisible, and unless they get the amount they agreed to subscribe for they cannot be bound by the Board of Police, in any other mode, and unless the terms submitted to them, and prescribed by the statute are complied with, then there is, and can be, no legal contract, or one that a court of law can enforce. The county is entitled to all the stocks subscribed for, or none.

9th. That by the amendment to said Act, approved March 4th, 1852, the tax collector is required to issue to each tax-payer a separate receipt for the amount of "said Railroad tax;" and it is made the duty of the President of the Board of County Police, on

presentation of the amount of one hundred dollars of said Railroad receipts, to receive and file the same, and transfer one share of the stock "*subscribed for*" in said Mobile and Ohio Railroad Company, to the individual so presenting said receipt, and that said Railroad tax receipts are made by the Statute *transferable by delivery;* and the holders of such tax receipts have a vested interest in the same (if the taxes were legally levied and collected) that cannot be compromised, or given away, or changed or altered by any contract or agreement between the plaintiff and the Board of Police, or the President thereof.

10th. That the plaintiff, the Board of Police, the President thereof, and the sheriff and tax collector cannot collectively, nor can any two or more of them, by any contract or agreement, they can make by way of *compromise,* lawfully appropriate any money *levied and collected as a special tax under the statute aforesaid for the purpose of paying for stock subscribed for in the Mobile and Ohio Railroad according to the provisions of said act,* to any other purpose, nor can they make or enter into any valid or binding contract to *release* said county from the *whole amount* voted on by the legal voters to be subscribed for, upon paying to the plaintiff, the special tax so collected and in the hands of the Sheriff and tax collector, as a *bonus for letting the county off from subscribing at all.* That the plaintiff and the Board of Police have no authority to enter into any such agreement nor any power so to *divert the fund.* Nor can the sheriff or tax collector make any valid agreement to pay the same to the plaintiff upon any such consideration.

11th. That no recovery can be had except upon a special contract entered into, in conformity with the provisions of said statute, and to pay for stock subscribed for in the mode prescribed.

12th. That the writing sued on is not a bill of exchange, being payable out of a particular fund, and not being for a sum certain, and does not import a consideration, and any agreement to pay the same must be founded upon a sufficient legal consideration.

13th. That the President of the Board of County Police has *no legal title* to the money collected as a special tax under said statute, and can make no *transfer or assignment* of the same, so as to enable the assignee to sue and maintain an action in its own name. Nor is the money so collected in the hands of the sheriff liable to be applied otherwise than as the law directs; and an order of the board of County Police on the sheriff, directing him to pay money in his hands levied and collected as a "special tax" under said statute, otherwise than as the law directs, (to pay for stock subscribed for in said Railroad Company,) *is void and of no effect.*

14th. That a corporation and an individual stand on a different footing, for a corporation can make no contract which is not expressly authorized by its charter, or necessarily incident to the purposes of its creation.

15th. A corporation can not be bound by its agents for acts not

within the powers conferred upon it by its charter; contracts based on such acts are void, and a subsequent ratification by the directors will not render them valid, and neither party in such case is estopped by the consideration received, from denying their competency to make the contract. The plaintiff can acquire no title to money sued for, except by, through and under the act aforesaid, authorizing and enabling such counties as aforesaid to subscribe for stock, and any contract beyond and without the powers conferred by said act, is without authority and void.

Which were refused by the Court. Whereupon the defendant, by his counsel, then and there excepted, and then and there tendered this his Bill of Exception, which was then and there signed and sealed by the Court, and made a part of the record in this cause.

The Jury then retired, under the care of their officer, and found the following Verdict, which they returned into court.

We of the jury find for the plaintiff the sum of $8,875 62 Prin.
And the sum of . . . . . 1,577 85 Int.

$10,451 47

Signed and sealed by me this the 5th day of June, A. D. 1860.
S. J. GHOLSON, [SEAL.]

And afterwards, to wit: on the 7th day of June, 1860, the defendant filed his writ of error bond in this cause, in the words and figures following, to wit:

United States of America,
Southern District of Mississippi, } *sct.*

Bond for Writ of Error.

Know all men by these presents, That we, William W. Bell, Samuel D. Pinson, Richard A. Pinson, Enoch C. Bell, are held and firmly bound unto the Mobile and Ohio Railroad Company the just and full sum of twenty thousand nine hundred and two dollars and forty-four cents, lawful money of the United States, to be paid to the said Mobile and Ohio Railroad Company, their lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth of June, A. D. one thousand eight hundred and sixty.

The condition of the above obligation is such, that, whereas, at a term of the District Court of the United States, for the Northern District of Mississippi, commenced and held at the town of Pontotoc, on the first Monday of June, A. D. 1860, judgment was

rendered by said Court in favor of the said Mobile and Ohio Railroad Company, against the said William W. Bell for the sum of ten thousand four hundred and fifty-one dollars and forty-seven cents and costs of suit, and the said William W. Bell hath sued out a writ of error from the Supreme Court of the United States to reverse said judgment. Now, if the said William W. Bell shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he, the said William W. Bell, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

W. W. BELL, [SEAL.]
SAMUEL D. PINSON, [SEAL.]
RICHARD A. PINSON, [SEAL.]
E. C. BELL. [SEAL.]

Sealed and delivered in
presence of
R. W. EDMONDSON.

Upon which said bond are the following endorsements, to wit:

I approve of the within bond and securities. Given under my hand this the 8th day of June, A. D. 1860.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Filed June 7th, 1860.
R. W. EDMONDSON, *Clerk.*

Writ of Error.

Writ of Error is in the words and figures following, to wit:

United States of America, *ss.*

The President of the United States to the Judge of the District Court of the United States for the Northern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you, between the Mobile and Ohio Railroad Company, plaintiffs, and William W. Bell, defendant, a manifest error hath happened to the great damage to the said William W. Bell, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the

first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth. Issued the 6th day of June, A. D. 1860.

R. W. EDMONDSON,
Clerk of the District Court of the United States for the Northern District of Miss.

Upon which said writ of error is the following endorsement, to wit:

A copy of the writ of error lodged in pursuance of the statute of the United States, in such case made and provided, for the above-named Mobile and Ohio Railroad Company, defendant in error.

HARRIS, HOUSTON & FONTAINE,
for Plaintiffs in Error.

Citation.

Citation is in the words and figures following, to wit:

United States of America, *ss.*

To the Mobile and Ohio Railroad Company, or H. R. Miller, attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Northern District of Mississippi, wherein William W. Bell is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, this sixth day of June, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fifth year of the Independence of the United States.

S. J. GHOLSON.

Certificate.

United States of America, }
Northern District of Mississppi. }

I, Robert W. Edmondson. Clerk of the District Court of the United States for the Northern District of Mississippi, do hereby certify, that the foregoing sixty-eight pages contain a full, true, and perfect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain of record, and on file in my office, and also of the writ of error bond, writ of error and citation, and the endorsements of the Judge and Clerk thereon.

In testimony whereof, I, Robert W. Edmondson, Clerk of said Court, have hereunto set my hand and affixed the [SEAL.] seal of said Court, at office, in Pontotoc, this 4th day of September, A. D. 1860.

R. W. EDMONDSON, *Clerk.*

Writ of Error.

United States of America, *ss*

The President of the United States,

To the Judge of the District Court of the United States for the Northern District of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between the Mobile and Ohio Railroad Company, plaintiffs, and William W. Bell, defendant, a manifest error hath happened, to the great damage of the said William W. Bell, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States, the eighty-fourth.

[SEAL.]

Issued the 6th day of June, A. D. 1860.

R. W. EDMONDSON,
Clerk of the District Court of the United States for the Northern District of Mississippi.

Citation and Service.

United States of America, *ss.*

To the Mobile and Ohio Railroad Company, or H. R. Miller, Attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Northern District of Mississippi, wherein William W. Bell, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel J. Gholson, Judge of the District Court of the United States for the Northern District of Mississippi, this sixth day of June, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fifth year of the Independence of the United States.

[SEAL.]

S. J. GHOLSON,

I acknowledge service of within, this 11th September, A. D. 1860.

HUGH R. MILLER,
Att'y of Mobile and Ohio R. R. Co.

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Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 259 (NOW 49.)

WM. W. BELL, Plaintiff in Error, *vs.* THE MOBILE AND OHIO RAILROAD COMPANY.	In Error to the District Court of the United States for the Northern District of Mississippi.

ARGUMENT FOR THE APPELLEES.

In this case, which was an action of assumpsit by the company against Bell, who was sheriff of Pontotoc county, the defendant first pleaded at the return term two pleas in abatement to the right of the company to sue in that court. (See page 4.)

To these pleas the plaintiffs filed replications, tendering issues of fact, at the same term.

No demurrers appear to have been filed to either of these replications, and no issue was joined on them.

On the 15th of June, 1859, an entry in the minutes appears, saying that the plaintiffs' demurrer to the defendant's plea in abatement was heard and sustained by the court, and says, also, at the same time, that the defendant's demurrer to the plaintiffs' declaration was taken under advisement by the court, and that the case was continued; and, in fact, we find on the record a demurrer to the declaration entitled of December Term, 1858, on which there was a joinder in demurrer. (When filed is not stated.) (Page 7 of the record.)

It appears further that on the 5th of December, 1859, the demurrer to the declaration was overruled by the court, and that on the same day the defendant pleaded

the general issue to the declaration on which issue was joined.

Under this state of pleadings, it is considered by us that no question here arises as to the jurisdiction of the court. We understand that the court will take notice of a want of jurisdiction over the subject-matter, but that as to the citizenship of the plaintiff the objection must be pleaded.

There were two pleas to the jurisdiction; the first one differs from the second. The replications were several, and the entry on the minutes saying that the demurrer to the plea was overruled, does not specify which plea was demurred to, and does not say that both were. Besides, no demurrers are found. The plaintiff obtained no benefit from any demurrer to those pleas, but on the contrary appears to have replied to them and tendered issues on them, and no answer appears to those replications; but, on the contrary, the pleas appear to have been waived and abandoned by a demurrer to the declaration, entitled of the December Term, 1858, and the denial of the truth of the pleas, the replications not being controverted.

The first plea in abatement was simply a denial that the plaintiff was a corporate body.

The second plea involved a question of law. But as this mere recital of a decision on demurrer, which is not shown, does not show which plea was demurred to, if any, in fact, was demurred to, we suppose the court cannot now here consider the decision on that point.

As before stated, the declaration was demurred to as to the first and second counts. There was no demurrer to the third count, (page 7;) and, after demurrer overruled to the first and second counts, the general issue was filed to the whole declaration, and issue was then joined.

This third count, which was not demurred to, was a common count in assumpsit for money had and received, and on an account stated.

There was no good ground of demurrer to the first and

second counts; they both aver that the defendant had collected money subject to the order of the Board of Police of Pontotoc county, for the benefit of the plaintiff; that the court, by its president, had ordered it to be paid to the plaintiffs, and that the defendant had promised to plaintiffs to pay it to them. All this amounted to nothing more nor less that the count for money had and received covered.

The next question arises on the bill of exceptions. But we contend that no error intervened which should cause a reversal.

The court, we think, restricted the right of the company to a narrower ground than the plaintiff was entitled to occupy, under the pleadings and proof, but the result was the same on both grounds shown by the proof.

The allegations of the declaration set forth in the first and second counts were fully proved; the third count admitted of a broader ground. We were entitled to recover on the ground on which the court put the case, but we were entitled to recover on the broader ground of the compromise.

The effect of the two grounds was different. A recovery on the ground decided by the court may be considered as binding the company to grant stock for the amount recovered, when paid. The effect of a recovery on the right acquired by the compromise made between the company and the court may not require them to grant stock for the amount. But a recovery was rightful on either ground, and when paid the right to claim stock must be settled between the company and the county, or the company and the tax-payers. The question as to the right to the stock is not concluded by this judgment, as the proper parties to settle that question are not before the court. Therefore, if the judgment be correct, even if founded on a wrong reason given by the court, or if the court restricted our right too much, a reversal does not follow.

The whole defence on the trial can be answered by

saying that the sheriff was but the executive officer of the police court, and stood as its treasurer or cashier, and that it was for the police court to determine whether it would pay or not, and the sheriff had no veto on that power, and no right to question the mandate of that court or review its decisions. He did not represent the parties to ny contest in respect to the fund, and those parties could not be bound by his act. He had no interest in the question to litigate.

The President of the board of police was the head of that corporation, and his order or mandate was authoritative; the sheriff was bound to obey it, and that order justified him in making payment; he could not question the order, nor inquire into the reasons for which the order was given, nor judge of those reasons.

The statute required the sheriff to give bond conditioned to pay the money to the order of the President of the board of police. (See sec. 6, page 22 of the record.)

The plaintiff obtained no benefit from any demurrer to those pleas, but on the contrary replied to them and tendered issues on them, and no answer appears to those replications, but on the contrary the pleas appear to have been waived and abandoned by a demurrer to the declaration, entitled of the December Term, 1858, and the denial of the truth of the pleas, the replications not being controverted.

The questions between the company and the county of Pontotoc were not fully developed on the trial. It appears that the company sued the county; for what injury or claim does not appear; how much money for the company had been collected does not appear; how much the company had received, and how much was in the county treasury, is not disclosed; nor how much stock the company had issued to the tax-payers. All these things are unknown, as well as how much injury, or what kind of damage the company had sustained, or what sums the county was liable for. It seems, then, that a suit was

pending, and certainly the corporation had the right to sue for any injury or damage it may have sustained. The police court had the right and was bound to defend that suit, or pay the demand; and if they could satisfy the demand by paying a part, and be released thereby from the whole, and this was done in good faith, it would seem that they should have full authority to do so. But this the court did not decide, and only decided that the company had the right to the money, on grounds which gave the tax-payers stock to the amount. The error, if any, would seem to have been to the prejudice of the company, and not of the defendant.

We believe there was no error in the decision of the court for which the judgment should be reversed.

CHARLES F. PECK,
For Defendant in Error.